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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

**[FAR Case 2015-016; Docket 2015-0016; Sequence 1]**

**RIN 9000-AM97**

**Federal Acquisition Regulation; Prohibition on  
Reimbursement for Congressional Investigations and  
Inquiries**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 857 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. This section provides additional requirements relative to the allowability of costs incurred by a contractor in connection with a congressional investigation or inquiry.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before **[Insert date 60 days after publication in the FEDERAL REGISTER]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2015-016 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-016". Select the link "Comment Now" that corresponds with FAR Case 2015-016. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2015-016" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2015-016, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathlyn Hopkins, Procurement Analyst, at 202-969-7226 for clarification of content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite FAR case 2015-016.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 857 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) amended 10 U.S.C. 2324(e)(1) to disallow costs incurred by a contractor in connection with a Congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in 10 U.S.C. 2324(k)(2).

While Section 857 only applies to contracts with the DoD, NASA, and the Coast Guard, for the purpose of promoting consistency in the accounting systems of Federal contractors, it was decided to apply the section's requirements to all agencies subject to the FAR.

Additionally, conforming language on unallowable costs is proposed for FAR 31.603-16, as well as for 31.603-15 (to update language associated with Whistleblower complaints).

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including

potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **III. Regulatory Flexibility Act**

DoD, GSA and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely disallows the costs incurred in the extremely rare instances when a contractor incurs costs in connection with a congressional investigation or inquiry into an issue regarding a criminal, civil, or administrative proceeding relating to a violation of, or failure to comply with, a Federal or State statute or regulation. However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The proposed rule will be manifested as a cost principle to which only select small businesses are

subject. An analysis of contracts awarded during Fiscal Year 2014 revealed that fewer than 200 small businesses were performing contracts subject to FAR 31. Given the small segment of the small business population that could be impacted by the rule, in concert with the low likelihood of the conditions being met, the impact on small businesses is insignificant.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-016), in correspondence.

#### **C. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35.

#### **List of Subject in 48 CFR Part 31**

Government procurement.

William Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR part 31 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 31.205-47 by—

a. In paragraph (a)—

i. Removing the words "Fraudmeans—" and adding "Fraud means—" in its place;

ii. Removing the words "Penalty, does" and adding "Penalty does" in its place; and

iii. Removing the words "Proceeding, includes" and adding "Proceeding includes" in its place;

b. Removing from the introductory text of paragraph (b) "employees)," and adding "employees);" in its place; and

c. Adding paragraph (f) (9).

The addition reads as follows:

**31.205-47 Costs related to legal and other proceedings.**

\* \* \* \* \*

(f) \* \* \*

(9) A Congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in paragraphs (b)(1) through (5) of this section (see 10 U.S.C. 2324(e)(1)(Q)).

\* \* \* \* \*

3. Amend section 31.603 by revising paragraphs (b) introductory text and (b)(15) and adding paragraph (b)(16) to read as follows:

**31.603 Requirements.**

\* \* \* \* \*

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324, 41 U.S.C. 4304, 31 U.S.C. 3730, and 41 U.S.C. 4310, the following costs are unallowable:

\* \* \* \* \*

(15) Unless any of the exceptions at 31.205-47(c), (d) or (e) apply, costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings that result in dispositions as described in 10 U.S.C. 2324(k) or 41 U.S.C. 4310 commenced by a Federal, State, local, or foreign government, or by a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409, for violation of, or a failure to comply with, law or



regulation by the contractor (including its agents or employees); or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730.

(16) Costs incurred in connection with a Congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in 10 U.S.C. 2324(k) or 41 U.S.C. 4310, unless any of the exceptions at 31.205-47(c), (d) or (e) apply.

**[BILLING CODE 6820-EP]**

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